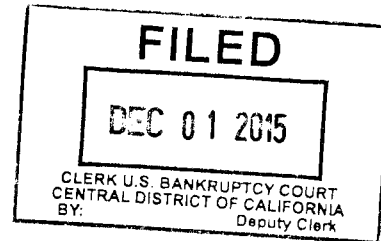


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Attorney for the Respondent  
**ANGEL R. ROBINSON-MALDONADO**

UNITED STATES BANKRUPTCY COURT  
CENTAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re: ANGEL R. ROBINSON-  
MALDONADO  
.....Debtor

) Case Type.: Chapter 7  
) **Case No. 2:14-bk-22962-RK**  
) **Adversary No. 2:14-ap-01660-RK**

JOSEPHINE JEANE S ROBINSON, an  
individual,  
.....Plaintiff,

) Assigned for all purposes to:  
) The Hon. Robert Kwan

vs.

) NOTICE OF MOTION AND 12(b)(6)  
) MOTION TO DISMISS FOR FAILURE  
) TO STATE A CLAIM; MEMORANDUM OF  
) POINTS AND AUTHORITIES

ANGEL R. ROBINSON-MALDONADO,  
.....Defendant

**DATE: February 9, 2016**  
**TIME: 2:30PM**  
**DEPT: Courtroom 1675**  
**255 E. Temple Street**  
**Los Angeles, CA 90012**

TO PLAINTIFF, JOSEPHINE JEANE S ROBINSON AND HER ATTORNEY(S) OF  
RECORD:

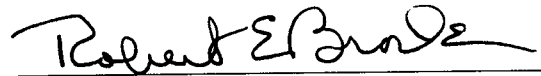
PLEASE TAKE NOTICE that on Tuesday, February 9, 2016, at  
2:30 PM in Courtroom 1675 of the above-entitled Court located at  
255 East Temple St., Los Angeles, CA, Debtor/Defendant ANGEL R.  
ROBINSON-MALDONADO will move this Court for an Order dismissing  
the Complaint.

NOTICE OF MOTION AND 12(b)(6) MOTION TO DISMISS Points & Authorities

1 This Motion will be made on the grounds that Plaintiff has  
2 failed to state a claim upon which relief can be granted under  
3 the *Federal Rules of Bankruptcy Procedure* § 7012(b)(6),  
4 ("FRBP").

5 This Motion is based upon this Notice, the attached  
6 Memorandum of Points and Authorities, the complete files and  
7 records of this action and such other evidence as may be  
8 presented at the hearing on this Motion.

9  
10  
11 Dated November 28, 2015



**ROBERT E. BRODE,**  
Attorney for Defendant,  
ANGEL R. ROBINSON-MALDONADO

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF FACTS**

1. Plaintiff filed an adversary complaint on October 16, 2014 ("Complaint") against Defendant. The Complaint contained one cause of action for 11 U.S.C. § 523(a)(4) claiming Fraud and therefore not dischargeable.
2. From October 16, 2014 through April 23, 2015, there were a series of contacts, emails and demands made by the Plaintiff regarding information requests. On or about April 23, 2015, there was a mediation hearing to determine if a resolution could be found.
3. On or about May 14, 2015, Plaintiff submitted 15 pages of interrogatories as well as additional pages of discovery
4. On or about May 14, 2015 Plaintiff filed a Motion to compel discovery and to sanction Defendant for refusal to respond to discovery and allegedly disclosing information at the mediation hearing.
5. On or about June 16, 2015 the undersigned attorney represented the Defendant and on Jul 07, 2015, filed a substitution of attorney, and formally entered the case
6. On or about June 23, 2015, the parties met and were unable to come to an agreement.
7. Plaintiff is the sister-in-law of the Defendant. The record shows that she was a cosigner on the defendant's school loans and on a \$350.00 credit purchase from Best Buy. The student loan is not dischargeable in bankruptcy and apparently Best Buy is not pursuing the relatively minor credit purchase.

1 8. On October 27, 2015 Plaintiff filed an Amended Complaint  
2 in this matter. The Amended Complaint moves the Court to  
3 1) Deny the Discharge under 11 USC 727 and  
4 2) Declare Debt to Be Non Dischargeable  
5

6 **II. ALLEGATIONS OF THE AMENDED COMPLAINT**  
7

8 9. Plaintiff has submitted another very lengthy complaint.  
9 Page 2 lists six paragraphs incorrectly numbered  
10 sequentially as 4, 5, 3, 4, 5 & 6. The Defendant  
11 specifically denies each and every allegation made.  
12 Further, the Plaintiff makes a bare, naked allegation  
13 without any proof of fraud or criminal wrongdoing.

14 10. On Page 3, Plaintiff again brings up the computers  
15 purchased from Best Buy (Paragraphs 7-11). This time there  
16 is not one computer alleged but rather, two. Plaintiff  
17 makes several comments about negotiations prior to the  
18 filing of the Bankruptcy. She still does not offer  
19 evidence of fraud

20 11. Plaintiff contends that in order to get a promotion,  
21 Defendant told her that she needed to go back to school  
22 and would have to get a student loan - which was true and  
23 did happen). Defendant and her husband were separated and  
24 her credit wasn't good. Plaintiff co-signed for Defendant  
25 voluntarily. Now Plaintiff claims that statement was a lie  
26 to induce her to co-sign on the student loan. Plaintiff  
27 assumes this statement made years ago was sufficient to  
28 prove fraud.

1 12. Plaintiff also claims Defendant makes \$120,000 a  
2 year. Defendant is unsure where Plaintiff gets this  
3 information since Defendant has one job (at College of the  
4 Canyons) that pays approximately \$70,000 and is given a  
5 paycheck each month that can be verified.

6 13. Plaintiff alleges in paragraph 13 there is a personal  
7 loan to Plaintiff's brother that Plaintiff guaranteed.  
8 There is no record of such a loan being challenged at the  
9 Creditors hearing.

10 14. In Paragraph 14, the Plaintiff alleges there is  
11 "child support" owing for the Defendant's daughter.  
12 Plaintiff seems to have forgotten that Plaintiff's husband  
13 made the offer for the daughter to live there at no  
14 charge. Further, she keeps reminding this court that her  
15 husband was referred to the LASO for inappropriate conduct  
16 with a minor. The child support "payments" are additional  
17 attempts to harass the Defendant.

18 15. On page 4, Plaintiff starts another series of  
19 paragraphs claiming damages. Damages are not appropriate.

20 16. Plaintiff's case consists entirely of speculation,  
21 innuendo, inaccurate calculations and personal opinion.

22 17. Defendant denies that the failure to pay Plaintiff's  
23 bill was malicious, willful, or done with fraudulent  
24 intent.

25 18. Defendant contends that the Complaint fails to state  
26 a claim for relief, as it fails to state facts sufficient  
27 to show that:  
28

1 a. The Defendant knowingly, intentionally, falsely,  
2 and/or fraudulently filed bankruptcy to defraud the  
3 Plaintiff

4 b. The Defendant fraudulently caused credit issues for  
5 the Plaintiff

6 c. The Defendant made any representations and/or  
7 omissions with the intention to defraud and deceive  
8 Plaintiff. Defendant had self help prepare the forms  
9 and when Plaintiff pointed out mistakes on her form,  
10 she went to an attorney who then prepared the forms  
11 and filed an amended form.

12 19. Defendant requests that this Court dismiss the  
13 Complaint for failure to State a causation on which relief  
14 can be granted.

15 **II. LEGAL ARGUMENT**

16 20. Plaintiff has failed to meet her burden of proving  
17 that the discharge should be denied. The courts construe  
18 §727 and §523 liberally in favor of debtors and strictly  
19 against parties objecting to discharge.

20 21. Because Plaintiff is objecting to the discharge of  
21 the Defendant, Plaintiff bears the burden of proving by a  
22 preponderance of the evidence that the discharge should be  
23 denied:

24 *"Those objecting to discharge bear the burden of*  
25 *proving by a preponderance of the evidence that the*  
26 *debtor's discharge should be denied. In keeping with*  
27 *the fresh start purposes behind the Bankruptcy Code,*  
28 *courts should construe § 727 liberally in favor of*

1 debtors and strictly against parties objecting to  
2 discharge." In re Retz (9th Cir. 2010) 606 F. 3d  
3 1189, 1196 (internal citations and quotations  
4 omitted.)

5 "This does not alter the burden on the objector, but  
6 rather means that "actual, rather than constructive,  
7 intent is required" on the part of the debtor. In re  
8 Khalil, 379 B.R. at 172.

9 22. In order for Plaintiff to prevail on his claim,  
10 Plaintiff must show that the debtor, knowingly and  
11 fraudulently "gave, offered, received, or attempted to  
12 obtain money, property, or advantage, or a promise of  
13 money, property, or advantage, for acting or forbearing to  
14 act."

15 23. Plaintiff's Complaint provides only conclusory  
16 allegations without proof and never provides an amount  
17 specific showing how much she has lost as a result of the  
18 Defendant's bankruptcy. She provides no objective facts  
19 that would lead the Court to conclude that this matter  
20 involves anything other than a client who was unable to  
21 pay her bills and who sought the Constitutional protection  
22 of this Court from her creditors.

23 24. Plaintiff has not offered a scintilla of evidence, or  
24 any facts, beyond a set of defamatory inferences and  
25 conclusions of her own, that Defendant's state of mind was  
26 as Plaintiff alleges.

27 25. The Court is not bound by conclusory statements,  
28 statements of law, and unwarranted inferences cast as

1 factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S.  
2 544, 555-57 (2007); *Clegg v. Cult Awareness Network*, 18  
3 F.3d 752, 754-55 (9th Cir. 1994).

4 26. Because the Complaint fails to state any facts which  
5 showed that the Defendant made any false statement or  
6 promise with the knowledge at the time she made it that it  
7 was false, that she made it with the intention and purpose  
8 of deceiving the Plaintiff, Plaintiff has failed to meet  
9 her burden of showing that the discharge of the Defendant  
10 should be denied.

11 **III. CONCLUSORY ALLEGATIONS AND LEGAL CONCLUSIONS ARE NOT**  
12 **SUFFICIENT TO PREVENT A MOTION TO DISMISS; FURTHER LEAVE TO**  
13 **AMEND NEED NOT BE GRANTED WHERE ANY AMENDMENT WOULD CONSTITUTE**  
14 **AN EXERCISE IN FUTILITY.**

15 27. Conclusory allegations or legal conclusions are not  
16 sufficient to prevent a motion to dismiss. The Complaint  
17 contains a variety of conclusory allegations that  
18 Defendant made false and/or fraudulent statements, but  
19 provides no factual allegations of fraudulent intent on  
20 the part of Defendant. The complaint does not give  
21 Defendant fair notice of any legally cognizable claim.

22 28. Dismissal of a complaint pursuant to Federal Rule of  
23 Civil Procedure 12(b)(6) is appropriate when the complaint  
24 does not give a defendant fair notice of a legally  
25 cognizable claim and the basis on which it rests. *Bell*  
26 *Atl. Corp. v. Twombly*, (2007) 550 U.S. 544, 555.

27 29. A plaintiff must plead facts showing that a violation  
28 is plausible, not just possible. *Twombly supra*, at 555.



1 30. Because of the very nature and philosophy of the  
2 Bankruptcy law the exceptions to dischargeability are to  
3 be construed strictly, *Gleason v. Thaw*, 236 U.S. 558, 35  
4 S.Ct. 287, 59 L.Ed. 717 (1915), and the burden is on the  
5 creditor to prove the exception. *Danns v. Household*  
6 *Finance Corp.*, 558 F.2d 114 (2d Cir.1977).

7 31. In order to preclude the discharge of a particular  
8 debt because of a debtor's false representation, a  
9 creditor must prove that: the debtor made a false  
10 representation with the purpose and intention of deceiving  
11 the creditor; the creditor relied on such representation;  
12 his reliance was reasonably founded; and the creditor  
13 sustained a loss as a result of the representation. See,  
14 *In re Lange*, 40 B.R. 554 (D.C.Ohio 1984); *In re McGrath*, 7  
15 B.R. 496 (D.C.N.Y.1980); *In re Hunt*, 30 B.R. 425  
16 (M.D.Tenn.1983).

17 32. The debtor must be guilty of positive fraud, or fraud  
18 in fact, involving moral turpitude or intentional wrong,  
19 and not implied fraud, or fraud in law, which may exist  
20 without the imputation of bad faith or immorality. *Neal v.*  
21 *Clark*, 95 U.S. 704, 5 Otto 704, 24 L.Ed. 586 (1887);  
22 *Gabellini v. Rega*, 724 F.2d 579 (7th Cir.1984); *In re*  
23 *Pedrazzini*, 644 F.2d 756 (9th Cir.1981); *et al.*

24 33. The burden is on the creditor to prove the debtor's  
25 culpability by clear and convincing evidence. *In re*  
26 *O'Karma*, 46 B.R. 422 (D.C.Pa.1984); *In re Schwartz*, 45  
27 B.R. 354 (S.D.N.Y.1985); *In re Browning*, 31 B.R. 995  
28

1 (S.D.Ohio 1983); *In re Musser*, 24 B.R. 913 (W.D.Va.1982);  
2 *In re Colasante*, 12 B.R. 635 (E.D.Pa. 1981).

3 34. Conclusory allegations or legal conclusions  
4 masquerading as factual conclusions will not suffice to  
5 prevent a motion to dismiss. *Stac Electronic Securities*  
6 *Litigation v. Anderson* (9<sup>th</sup> Cir. 1993) 89 F.3d 1399, 1403.  
7 (citing text).

8 35. The Complaint alleges acts or statements of  
9 intentional fraud and misrepresentation, but provides no  
10 objective evidence, merely conclusory statements.

11 36. The Complaint lists numerous allegations which are  
12 completely irrelevant to this matter.

13 37. Defendant contends that these allegations fail to  
14 show that Defendant did anything fraudulent, but that  
15 Plaintiff's allegations are clearly an attempt to evade  
16 the fact that the Complaint has no merit, that Plaintiff  
17 can provide no evidence, and that Plaintiff cannot state a  
18 claim under §523 against the Defendant.

19 38. Here, the debtor has been dragged through a round of  
20 mediation, nearly a full year of litigation, and two  
21 complaints, with the attendant stress, emotional distress,  
22 uncertainty, and costs & fees. This debtor brought her  
23 chapter 7 proceeding in order to relieve herself from  
24 unsustainable debt, not to increase her attorney fees and  
25 create more debt. The relentless and unwarranted attack by  
26 Plaintiff defeats the purpose of discharge as well as the  
27 "fresh start", and is unjust and burdensome.  
28


39. Even "artful pleading" in an insubstantial case will not necessarily prevent a motion to dismiss. *Ascon Properties v. Mobil Oil Co.*, (9<sup>th</sup> Cir. 1989) 866 F.2d 1149 at 1155. The court went on to quote *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir.1988) "We have, however, also recognized that conclusory allegations without more are insufficient to defeat a motion to dismiss for failure to state a claim."

40. Defendant contends that allowing Plaintiff leave to amend would in fact constitute an exercise in futility and therefore requests that the Court grant the motion to dismiss without leave to amend.

#### V. CONCLUSION

For the foregoing reasons, Defendant requests that the Court grant her Motion to Dismiss for failure to state a claim.

Dated: November 28, 2015

  
ROBERT E. BRODE, Esq.  
Attorney for Debtor/Defendant  
ANGEL R. ROBINSON-MALDONADO